

SPECIAL CIVIL APPLICATION NO. 12921 OF 1994  
with  
SPECIAL CIVIL APPLICATION NO. 3601 OF 1994

cr

Date of Decision: 9th/10th March 1995

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE M.R. CALLA

1. Whether Reporters of Local Papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgment? No

..

i

question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

Special Civil Application No. 12921 of 1994

Mr. Ajit D. Padival, Advocate for the petitioners nos.1 and 2

Mr. D.R. Bhatt, Advocate for the petitioner no.3 (newly added)

Mr. T.H. Sompura, Assistant Government Pleader for respondent no.1 and 2

Mr.N.D.Nanavati, Government Pleader, for respondent no.3.

Special Civil Application No. 3601 of 1994

Mr. S.B. Vakil, Advocate for the petitioners

Mr. Mr. T.H. Sompura, Assistant Government Pleader for respondent no.1.

Mr.N.D.Nanavati, Government Pleader for respondent no.2.

Coram : M.R. Calla, J.

9th/10th March 1995.

COMMON ORAL JUDGMENT:

These two Special Civil Applications are based on identical facts, giving rise to common grievance involving identical questions and, therefore, both these petitions are decided by this common judgment and order.

2. The petitioners in both these Special Civil Applications are working as Private Secretaries to the Judges of High Court in the High Court of Judicature for the State of Gujarat. They seek to claim parity with the Private Secretaries working with the Secretaries to the Government and equivalent posts in the Government Secretariat, in the matter of pay scales and claim that they should also be paid the pay scale of Rs.3000-100-3500-125-4500. It is stated that, they are English Stenographers, Grade-I (Class-II) and except petitioner no.3 in Special Civil Application No. 12921 of 1994, all the petitioners in both the Special Civil Applications are working as such, from different dates, from 16th October 1982. The dates of joining the service of High Court by the petitioners nos.1 and 2 in Special Civil Application No. 12921 of 1994 have been given out as 14th October 1986 and 31st December 1986 in paragraph 3 of the said Special Civil Application and with regard to the petitioners in Special Civil Application No. 3601 of 1994, the dates have been given in Annexure-A annexed with the said Special Civil Application at page 18 and the newly added petitioner no.3, in Special Civil Application No. 12921 of 1994, who was earlier working in the City Civil Court, Ahmedabad, has been working as Private Secretary (Stenographer Grade-I) in the Gujarat High Court since the year 1990 and he also claims the pay scale of Rs.3000-4500 with effect from 1st January 1986.

3. The case of the petitioners is that, the Fourth Central Pay Commission was constituted on 1st September 1983 to examine the then existing structure of emoluments and conditions of service, taking into account the total packet of benefits etc., available to the Central Government employees, industrial and non-industrial, personnel belonging to the All-India Services, the Armed Forces personnel and employees of the Union Territories and to suggest desirable and feasible changes. The posts of Secretaries in the Central Secretariat are manned by the officers of All-India Services, Group A Central Services on deputation and by members of Central Secretariat Service (CSS). There are three Central Secretariat Services: (i) Central Secretariat Service (CSS); (ii) Central Secretariat Stenographers Service (CSSS); and (iii) Central Secretariat Clerical Service (CSCS). The Fourth Central Pay Commission recommended merger of both Grades A and B, the pay scales of Rs.650-1040 and Rs.650-1200 and recommended a pay scale of Rs.2000-3500. The Fourth Central Pay Commission, therefore, equated the post of Stenographers Grade-I with that of the Central Government and granted the same pay scale to the Stenographers Grade-I, working in the Secretariat as Private Secretaries to Secretaries and equivalent officers. In Gujarat High Court, they were working as Private Secretaries to the Chief Justice and other puisne Judges. They were granted the Gazetted status and their pay scale of Rs.650-1200 was changed to Rs.2000-3500. It is, therefore, claimed that the Private Secretaries working in the Secretariat as also in the High Court were at par. According to the recommendations of the Fourth Central Pay Commission, after merger of Grades A and B of CSSS to bring in parity with CSS, the pay scale of Rs.2000-3500 was recommended for the posts of Grade A and B. To provide for further satisfactory promotional avenues for the members of CSSS, the Fourth Central Pay Commission recommended that posts of Private Secretaries to the Secretaries to Government of India and equivalent officers may be upgraded and given the pay scale of Rs. 3000-4500. Paragraphs 9.39 and 9.42 (page nos.117 and 118) of the Fourth Central Pay Commission Report are reproduced as under:

"9.39 : At present stenographers A & B  
(Gazetted) have common starting  
pay with difference only at the  
maximum of the scale. Grade B  
Stenographers are promoted to  
grade A posts. We are of the  
view that it will be desirable to

merge the grades A & B of the service so as to bring about parity with CSS at this level. We accordingly recommend the scale of Rs.2000-3500 for posts in grade A (Rs.650-1200) and grade B (Rs.650-1040). To provide further satisfactory promotional avenues for the members of CSSS, we recommend that posts of private secretaries to Secretaries to Government of India and equivalent officers may be upgraded and given the scale of Rs.3000-4500. For grades C & D of the service, the scales of pay of Rs.1400-2600 and Rs.1200-2040 may apply.

9.42 : There are stenographers working in other organisations which are not participating in the Central Secretariat Stenographers' Scheme but where the posts are in comparable grades..

and the method of their recruitment through open competitive examination is also the same, we recommend that stenographers in these organisations like Department of Railways, Ministry of External Affairs, may be placed in the same grades of pay as have been recommended for CSSS."

4. The Government of India vide the Ministry of Finance Notification dated 13th March 1987, accepted the recommendations of the Fourth Central Pay Commission that in the CSSS, the post of Private Secretaries to the Secretary to the Government of India and equivalent officers may be upgraded and given the pay scale of Rs.3000-4500. The President of India sanctioned the said upgradation as noticed under the Government of India Office Memorandum dated 7th October 1987. The Gujarat Sachivalaya and Allied Offices Stenographers' Association represented to the Government of Gujarat for creation of the post of Private Secretaries in the pay scale of Rs.3000-4500, as had been done in the Government of

India. Government of Gujarat appointed a Committee to examine the representation made by the aforesaid Association and having found sufficient justification to upgrade certain posts of senior-most Private Secretaries in the pay scale of Rs.3000-4500, equivalent to the number of officers in the rank of Additional Chief Secretaries and above in Sachivalaya. After considering the representation of the aforesaid Association and the recommendations of the Committee, the Government of Gujarat resolved as under:

"(i) Ten percent of the existing posts  
of Private Secretaries (English &  
Gujarati Stenographers Gr.I), on  
the Secretariat cadre, may be  
upgraded as Private Secretaries  
(Cl.I) and be given the pay scale  
of Rs.3000-100-3500-125-4500.  
These upgraded posts may be  
filled up by promotion from  
Private Secretaries (Stenographer  
Gr.I) on the basis of seniority-  
cum-merit. For becoming eligible  
to this grade, the incumbent must  
have put in at least 15 years of

..

(ii) Private Secretaries (Steno-  
graphers Gr.I English & Gujarati)  
on the Secretariat cadre, who  
have put in not less than 17  
years' service; of which 12 years  
in Gr. I and 5 years' in Gr.II;  
or 15 years' continuous service  
as Stenographer Gr.I in the case  
of direct recruits, may be  
promoted and placed in the higher  
pay scale of  
Rs.250075-2800-EB-100-4200."

5. The aforesaid Resolution of the Government of Gujarat was issued on 28th February 1990. In the Secretariat, there are in all 112 Private Secretaries; 40 (Gujarati Stenographers Gr.I) and 72 (English Stenographers Gr.I). Therefore, 10% of the existing posts of Private Secretaries comes out to be 11. Whereas Special Civil Application No. 3164 of 1990 filed by one Shri T.R.S.Nair and Special Civil Application No. 5337 of 1990 filed by the Gujarat Secretariat and Allied

Offices Stenographers' Association, the implementation of the Government Resolution dated 28th February 1990 was suspended. On 20th March 1991, the Government of Gujarat decided to revise the pay scale of 10% existing posts of Stenographers Grade I, i.e. from Rs.2000-3500 to Rs.3000-4500 and thereafter, vide Resolution dated 18th May 1991, the standards for the upgradation of 10% posts and appointment by promotions of Stenographers to the posts of Private Secretaries in the scale of Rs.3000-4500 was resolved. Thus, 10% of the posts of Private Secretaries existing on 1st January 1986 were to be upgraded to the pay scale of Rs.3000-4500. It is stated that the Acting Chief Justice of the High Court, in exercise of the powers conferred under Article 229 of the Constitution of India, with the approval of the Governor of Gujarat, directed the substitution of entries in the High Court Notification dated 3rd July 1987 showing the revised pay scale for the Secretary to the Chief Justice as Rs.2500-75-2800-100-4200 and Rs.4500-150-5700 (for the then incumbent only); and Private Secretaries to the Judges and English Stenographers Grade-I to the effect that 10% of the existing posts of Stenographers Grade-I (Gujarati and English) on the establishment of the High Court be upgraded as Private Secretaries in the pay scale of Rs.3000-100-3500-125-4500. A representation was made by some of the petitioners through the Registrar to the Chief Justice on 5th March 1990 for grant of pay scale of Rs.3000-4500 to all the Private Secretaries to the Judges of the High Court of Gujarat. The High Court of Gujarat (Recruitment & Conditions of Service of Staff) Rules, 1992 provide for the post of the Secretary to the Chief Justice, the Additional Secretary to the Chief Justice and the Private Secretaries to the Judges.

6. It has been submitted that the Private Secretaries to the Judges of the Delhi High Court filed a writ petition being C.W. No.289 of 1991, claiming that they should be placed in the pay scale of Rs.3000-4500 instead of the pay scale of Rs.2000-3500 which they were getting at that time. The Delhi High Court issued a writ of mandamus to the Union of India and others directing them to fix the salary of the Private Secretaries working with the Judges of the Delhi High Court in the pay scale of Rs.3000-4500 with effect from 1st January 1986 and against this decision of the Delhi High Court, Special Leave Petition was filed by the Union of India before the Supreme Court and the same was dismissed on 26th August 1991.

7. It has been further stated that the work attached to the office of the Private Secretaries of the Judges of

this High Court is equal to the work attached to the posts of Private Secretaries to the Secretaries to Government of India and equivalent officers; the Stenographers working in other organisations like, Railways, Ministry of External Affairs, Private Secretaries to the Secretaries to the Government of Gujarat, including the Chief Secretary and Principal Secretaries as also to the Private Secretaries to the Judges of Delhi High Court. The nature of work required to be done by the Private Secretaries to the Judges of the High Court and more particularly the High Court of Gujarat requires high stenographic skill and ability to cope up with the tremendous pressure of work, when attached to the Court taking admissions of matters etc.

10th March, 1995

With the increasing workload in the Courts and ever increasing new filing, the pressure of the work of the stenographers and Private Secretaries goes on increasing posing greater and greater challenge to their stenographic skill and ability to cope up with the work. Apart from taking down dictation in open Courts as well as in the Chamber of the Judges, the Private Secretaries also have to visit the residences of the Judges for taking down dictation and transcribing the same, the Private Secretaries are required to carry out corrections in all the copies of the judgments and to do various secretariat and confidential duties. Since the Private Secretaries have to deal with the orders passed on judicial side, they have to maintain high standards of secrecy and have to act with confidence and they have to keep the matters of confidentiality. It is thus, submitted that the post of Private Secretaries to the Judges of the High Court has greater responsibility and requires greater efficiency. It is also stated that in the Secretariat, there are only few officers whose pay starts at Rs.8000/- per month and it was given out by the learned Assistant Government Pleader also that at present, there are only two or three officers with the basic pay start of Rs.8000/- and not only the Private Secretaries of such officers are getting the basic pay in the pay scale of Rs.3000-4500, but even the Private Secretaries of certain Secretaries and officers who are not even getting the basic pay of Rs.8000/- per month are being paid in the pay scale of Rs.3000-4500, because 10% of the posts of Private Secretaries have been upgraded to the pay scale of Rs.3000-4500.

8. Mr. S.B. Vakil, learned Counsel for the petitioners in Special Civil Application No. 3601 of

1994 submitted that, earlier the pay of Rs.3500 fixed was there for the post of Secretary to the Government of India, the Chief Secretary of the States and equivalent posts. A few like posts are, Director General of Ordinance Factories, Director General of Insurance Bureau and Director General of Health Services who were on this pay and with regard to them, under the Fourth Central Pay Commission Report, the fixed pay of Rs.8000 was recommended. The aforesaid pay of Rs.8000 fixed was made in case of the aforesaid officers, with effect from 1st January 1986 and the pay with regard to the High Court Judges, which was Rs.3500 fixed earlier, was raised and made Rs.8000 fixed per month from 1st April 1986. The argument of the learned Counsel for the petitioners is that all the Private Secretaries working with the Judges of the High Court are, therefore, entitled to be treated at par with the Private Secretaries working with officers or Secretaries to the Government or equivalent officers whose pay is Rs.8000/- per month. It is thus, clear that the Private Secretaries working with the Judges of the High Court claim parity with the Private Secretaries working in the Secretariat on two counts:

(1) All the Private Secretaries to the Judges working in the High Court as Stenographers Grade-I, i.e. Private Secretaries, have to be treated at par with the Private Secretaries in the Secretariat in the pay scale of Rs.3000-4500 attached with the officers getting pay of Rs.8000/- per month.

(2) Even if 10% posts of Private Secretaries have been upgraded in the High Court the question still remains that when all the Private Secretaries working with officers getting Rs.8000/- per month in the Secretariat, why the restriction of 10% should be followed in the High Court, particularly because all the

Court are attached with the Judges, who are all drawing Rs.8000/- per month and more so when no private secretary in the Secretariat attached with officers drawing Rs.8000/- per month is getting the pay scale lower than Rs.3000-4500.

9. No return has been filed on behalf of the Chief Justice, i.e. respondent no.3 in Special Civil



Application No. 12921 of 1994 and respondent no.2 in Special Civil Application No. 3601 of 1994. An affidavit-in-reply dated 7th January 1995 has been filed by one Mr. V.B. Gandhi, Deputy Secretary, Legal Department, to which an affidavit-in-rejoinder was filed on 11th January 1995 and thereafter, an additional affidavit-in-reply was filed through Mr. H.B. Chithara, Under Secretary to the Government of Gujarat. In the affidavit-in-reply dated 7th January 1995 seeking to traverse the claim of the petitioners, the stand has been taken that the petitioners are Stenographers Grade-I, Class-II in the pay scale of Rs.2000-3500 as was upgraded pursuant to the recommendations of the Fourth Central Pay Commission by the Government of India's order dated 7th October 1987 from the pay scale of Rs.2000-3500 to that of Rs.3000-4500. It is submitted that existing posts of Private Secretaries to the Secretaries to Government of India and equivalent officers were upgraded to the scale of Rs.3000-4500 with effect from 1.1.1986. The Government of Gujarat constituted a High Level Committee under the Chairmanship of the Finance Minister to examine the matter regarding the pay and allowances of the employees of the Government of Gujarat and this High Level Committee recommended that only 10% of the posts of Private Secretaries working under the Government of Gujarat should be upgraded to the aforesaid pay scale of Rs.3000-4500. The Government of Gujarat in Finance Department issued the order on 20th March 1991 accordingly. The High Court also demanded to upgrade 10% posts of Stenographers Grade-I in the pay scale of Rs.3000-4500 and accordingly, under the Government Resolution, Legal Department dated 19th November 1991, the proposal of the High Court was accepted and 10% of the existing posts of Stenographers Grade-I was upgraded on the establishment of the High Court and therefore, the case of the petitioners that they have not been treated at par with the Private Secretaries in the Government Secretariat is wrong and misconceived. The demand of pay scale of Rs.3000-4500 for all the Private Secretaries was not justified as all the Private Secretaries in the Government Secretariat were not getting the pay scale of Rs.3000-4500, but only 10% of them were getting this higher pay scale, that too, on the basis of the upgradation of these posts to open better avenues of promotion as was recommended by the Fourth Central Pay Commission and equal percentage of the posts have also been upgraded to the pay scale of Rs.3000-4500 as was proposed by the High Court. It has also been stated in the reply that, the scheme of higher pay scale at the interval of 9 years, 18 years and 27 years was also introduced, according to which, the incumbents are

entitled to higher pay scales in case they are stagnated and, therefore, the grievance of absence of proper promotional avenues is also misconceived. However, this affidavit-in-reply is conspicuously silent on the question that all the Secretaries to the Government are not getting the pay of Rs.8000/- per month, whereas all the Judges of the High Court get the above basic pay of Rs.8000 fixed per month and yet all the Private Secretaries to the Judges are not getting the higher pay scale of Rs.3000-4500, whereas in the Government Secretariat, even those Private Secretaries who are working with Secretaries not drawing the pay scale of Rs.8000 fixed are getting the pay scale of Rs.3000-4500. Thus, so far as the question of parity is concerned, grievance appears to be legitimate to the extent that at present, all the Private Secretaries working with the Judges in the High Court are not being treated at par with the Private Secretaries working with the Secretaries in the Secretariat of the Government of Gujarat at the pay of Rs.8000/- per month. The learned Assistant Government Pleader's plea on the factual aspect of the matter is correct to the extent that 10% of the Private Secretaries in the Secretariat only are getting the higher pay scale of Rs.3000-4500 and 10% of the Private Secretaries working in the High Court are also getting the said pay scale of Rs.3000-4500. But, the disparity is apparent to the extent that in the Government Secretariat, all the Private Secretaries who are working with any officer getting pay of Rs.8000/- are getting the pay scale of Rs.3000-4500 and not only that in few cases even such Private Secretaries who are working with the Secretaries drawing the pay less than Rs.8000/- are also getting the higher pay scale of Rs.3000-4500; such Private Secretaries may be few in number, but even when there are two or three officers getting the pay of Rs.8000/- per month, about 11 Private Secretaries are getting the higher pay scale of Rs.3000-4500 in the Government Secretariat and, therefore, to that extent, the disparity is transparently visible. The case of the Private Secretaries to the Judges working in the High Court is, therefore, comparable with those Private Secretaries working in the Government Secretariat who are also working with the officers getting the pay of Rs.8000/- per month. Increase of the pay scale on the basis of the recommendations of the Fourth Central Pay Commission to Rs.2000-3500 and prescribing of the still higher pay scale of Rs.3000-4500 and the increase in the pay of certain officers like the Secretaries to the Government, Chief Secretary, etc. from Rs.3500 to Rs.8000 and increase in the pay scale of the High Court Judges to Rs.8000/- is co-terminus in point of time, i.e.

in the year 1986. The pay scale of Rs.3000-4500 in the case of the Private Secretaries was made effective from 1st January 1986 and in close proximity with this time the pay scale of the officers of the rank of the Chief Secretaries, Secretaries to the Government as also the High Court Judges was increased to Rs.8000 from 1st April 1986 and, therefore, it can be said that the intention was that the Private Secretaries who are attached with the officers at the starting pay of Rs.8000/- may get the higher pay scale of Rs.3000-4500 and in this background, if all the Private Secretaries working in the Government Secretariat with the officers whose starting pay is Rs.8000/- are getting the pay scale of Rs.3000-4500, there is no reason why do the Private Secretaries to the Judges of the High Court are not given the pay scale of Rs.3000-4500. It is a different matter that on what terms and conditions and by following what process of selection, the seniority or seniority-cum-merit or on the basis of merit alone, this higher pay scale is granted, but the limitation of 10% posts of the Private Secretaries in giving the pay scale of Rs.3000-4500 may be available and justified in the case of the Private Secretaries working in the Government Secretariat because all the Private Secretaries working in the Government Secretariat are not working with officers whose pay is Rs.8000/- per month, whereas in the High Court, all the Private Secretaries are working with Judges whose pay is Rs.8000/- per month and thus, the case of the Private Secretaries to the Judges is comparable only to those Private Secretaries working in the Government Secretariat who are working with the officers drawing pay of Rs.8000/per month.

10. The learned Assistant Government Pleader submitted that, in the Secretariat, the higher pay scale is given by upgrading the posts as an avenue of promotion and such Private Secretaries get the higher pay scale after working for number of years whereas in the High Court, the appointments to the posts of Private Secretaries to the Judges are by way of direct recruitment and if the claim of the petitioners is accepted, even a new entrant on the post of Private Secretary to the High Court Judge will get the pay scale of Rs.3000-4500 and, therefore, it cannot be said to be a case of disparity if only 10% of the posts are upgraded. What should be the mode of recruitment for the particular post and what should be the process of selection is entirely a matter which rests with the concerned rule making authority. So far as the scope of these Special Civil Applications are concerned, the only question is as to whether the Private Secretaries to the Judges of the

High Court may claim the parity with the Private Secretaries working in the Secretariat with the officers whose pay is equal to that of the High Court Judges or not.

11. Mr. Padival, learned Counsel for the petitioners in Special Civil Application No. 12921 of 1994 has placed reliance on a decision of the Division Bench Judgment of the Delhi High Court in Civil Writ No.329 of 1980 decided on 17th December 1980, reported in I.L.R. 1981 (2) Delhi, p. 102 (SHRI P.N. CHOPRA AND ORS. V. UNION OF INDIA AND ORS.). In this judgment, the Division Bench of Delhi High Court has concluded in the end of paragraph 6 that, the denial to equate the Private Secretaries and Readers in the matter of pay and other benefits with that of the Private Secretary to the Chief Secretary is an act of discrimination and arbitrariness at the hands of the Delhi Administration as well as Union of India and would violate Articles 14 and 16 of the Constitution and the impugned order fixing the pay scale of the petitioners at a lower scale than that being given to the Private Secretary to the Chief Secretary cannot be sustained and must be quashed. The aforesaid conclusion was arrived at after an elaborate discussion about the nature of the duties and the comparable status although in this decision, the Division Bench of the Delhi High Court observed that it did not wish to enter into the question whether the work done by a Judge or the work done by the Chief Secretary was more onerous or more responsible because it was not the point of dispute. The question is whether the duties performed by the Private Secretaries to the Judges are of less onerous, less confidential and less important nature than that of the Private Secretary to the Chief Secretary. Considering the stakes involved in the litigation and the burden of confidentiality reposed on these officers, the Division Bench of the Delhi High Court found it difficult to say that there is any other service in Administration which can claim even a close approximation of the responsibilities involved. In the Administration most of the correspondence, the job and the work done by the Private Secretary to the Chief Secretary would be of a routine kind entailing normal correspondence between various offices or even the public. Very little of the work could be of confidential and highly sensitive nature, but this cannot be said of the posts of Private Secretaries to the Judges in the High Court, because the job of maintaining the secrecy and the confidentiality of the judgments and considering the sanctity of the records the work requires a much higher sense of duty and dedication than any of the comparable level of staff in

the Administration. In Punjab and Haryana High Court, the Private Secretaries to the Judges have been equated to that of the Private Secretaries in the Punjab Civil Secretariat, in pursuance of a sanction granted by the President of India as required by Article 229 of the Constitution of India, read with Proviso (2) thereof, way back in the year 1970. The President of India has accepted the suggestion of the Chief Justice of the Punjab and Haryana High Court to equate their Private Secretaries with that of the Private Secretaries in the Punjab Civil Secretariat. The Division Bench of Delhi High Court has further considered that one of the ways of comparing the two posts could be by way of a uniform test. On the basis of the aforesaid reasons, a mandamus was issued directing the respondents to equate the posts of Private Secretaries of the High Court to that of the Private Secretaries to the Chief Secretary of Delhi Administration.

12. Yet another decision of the Delhi High Court, 1991 (6) S.L.R. p. 423 (A.K. GULATI AND ANR. V. UNION OF INDIA AND ORS.) has been relied upon by the learned Counsel for the petitioners. In this decision, it has been mentioned in paragraph 6 that, it is not in dispute that the Private Secretaries attached to the Secretaries to the Government of India have been placed in the pay scale of Rs.3000-4500 and reference has also been made to the affidavit-in-reply which had been filed on behalf of the Government of India, rightly admitting therein that the averments of the petitioners that their duties involve higher integrity, confidentiality and efficiency as compared to the Private Secretaries to the Secretaries to the Government of India and Private Secretary to the Chief Secretary, Delhi Administration were strictly true and each of the posts of Private Secretaries to the Judge of the High Court and the Private Secretary to the Secretary to the Government of India carries a lot of responsibility and efficiency. The Division Bench of the Delhi High Court, in this case, has opined that, right of the petitioners to get the higher pay scale of Rs.3000-4500 is based on the report of the Fourth Central Pay Commission itself and although the Pay Commission is not directly concerned with the fixing of the pay scale of the staff of the High Courts, nevertheless as a matter of practice, the pay scales so fixed have, by and large, been applied for all the employees of the High Court. The parity of pay scales between the Private Secretaries to the Judges of the High Court and the Private Secretaries to the Secretaries to the Government of India and the Private Secretary to the Chief Secretary, Delhi Administration has also been

noticed and it has been observed that when there has been a revision of pay scales from Rs.775-1200 to Rs.3000-4500 in the case of Private Secretaries to the Secretaries to Government of India, there is no reason as to why there should not be a similar upward revision of the pay scales of the Private Secretaries attached to the Judges of the High Court. The salary of the Judges of the High Court is the same as that of the Secretaries to the Government of India and it has been observed that the work which is performed by the Private Secretaries to the Judges is not less and in fact, more onerous, arduous and confidential in nature, the Private Secretary has also to be efficient and must have the highest integrity. It has been further observed that the Fourth Central Pay Commission itself had recommended that for the Private Secretaries of those officers, who are drawing salary of Rs.8000, the pay scale of Rs.3000-4500 should be granted.

13. The question, however, remains as has been argued on behalf of the Government that, the High Court had demanded only 10% of the posts of Private Secretaries to be upgraded to the pay scale of Rs.3000-4500 and accordingly the same was accepted and sanctioned. It was also submitted by Mr. T.H. Sompura, learned Assistant Government Pleader that, under Article 229(2) of the Constitution of India, it is for the Chief Justice to prescribe the conditions of service of officers and servants of the High Court and, therefore, so far as the Government is concerned, it cannot act to prescribe the conditions of service of the officers of the servants of the High Court. This contention based on Article 229(2) of the Constitution cannot be said to be wrong and, therefore, it is for the Chief Justice of the High Court to consider the anomaly which is faced in the matter of higher pay scale of Rs.3000-4500 between the Private Secretaries to the Judges and the Private Secretaries who are working with the officers drawing the pay of Rs.8000/- per month in the Government Secretariat. Therefore, it is to be considered, as looking to the discrimination suffered by the Private Secretaries to the Judges of the High Court, in what terms the relief is to be granted in the case at hand. Mr. T.H. Sompura, learned Assistant Government Pleader appearing for the Government of Gujarat has also contended that this Court cannot go into the question of the pay scales and no mandamus can be issued in the matters of pay scales. This objection cannot be sustained for the simple reason that in a given case if the Court finds that any party has been subjected to the discrimination, the Court can always give such appropriate directions so as to undo the effect of such discrimination as has been done in the

aforesaid two cases by the Division Bench of the Delhi High Court and in several other cases.

14. Before parting with the case, I may also deal with all the arguments which have been raised on behalf of the newly added petitioner no.3, in particular. It has been argued by the petitioner no.3 that, if at all, the higher pay scale is to be granted to the Private Secretaries to the Judges working in the High Court, and if the same is granted from 1st January 1986, he should not be deprived from the higher pay scale of Rs.3000-4500 from 1st January 1986 merely because, at that time, he was working in the City Civil Court, Ahmedabad and came to be appointed as Private Secretary in the High Court, after 1990. He has also submitted that the criteria of giving the pay scale of Rs.3000-4500 to the Private Secretaries working with the officers drawing pay scale of Rs.8000/- is not correct and on the principle of equal pay for equal work, all the Private Secretaries whether they are attached with the officers drawing the pay scale of Rs.8000/- or not, should be given the higher pay scale of Rs.3000-4500. I am afraid, this course of action will militate even against the basic object and the intention to which the recommendations were made by the Fourth Central Pay Commission and it would be going beyond the scope of these petitions as they were originally filed. The petitioner no.3 was joined later on, as a party on his own request and the frame of the petition as it was filed does not raise this controversy and therefore, in my opinion, the newly added petitioner, i.e. petitioner no.3 cannot be allowed to travel beyond the scope of the original petition more particularly, when the stand which he seeks to take runs inconsistent to the whole frame of the petition as it was originally filed. Despite this, the pay of the High Court Judges was raised to Rs.8000/- from 1st April 1986 and, therefore, there is no question of going to the date of 1st January 1986 as suggested by the petitioner no.3 and on the basis of the submissions made in the applications moved by the petitioner no.3 which can hardly be said to be substantive pleadings, this grievance of the petitioner no.3 cannot be entertained.

15. In the result, both these Special Civil Applications succeed and the same are accordingly allowed with the directions as under :

- (1) The Chief Justice may consider the anomaly in the matters of pay scales of the Private Secretaries to the High Court Judges and the Private Secretaries

attached to the officers drawing pay at Rs.8000/- in the Government Secretariat and keeping in view the observations made hereinabove, may consider as to what pay scales should be prescribed for the holders of the posts of Private Secretaries to the High Court Judges.

- (2) In case the Chief Justice decides and prescribes that the pay scale of the Private Secretaries to the High Court Judges should be the pay scale of Rs.3000-4500, such pay scale shall be

..

the Judges of the High Court as decided by the Chief Justice in accordance with the provisions of Article 229(2) of the Constitution of India and in accordance with the rules made by the Chief Justice in this behalf.

Rule is made absolute in terms as aforesaid in both these Special Civil Applications. There shall be no order as to costs.

\*\*\*\*\*